



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/821,796	03/30/2001	Yves Le Du	ATOCM-209	4998

23599 7590 12/01/2003

MILLEN, WHITE, ZELANO & BRANIGAN, P.C.  
2200 CLARENDON BLVD.  
SUITE 1400  
ARLINGTON, VA 22201

EXAMINER

JACKSON, MONIQUE R

ART UNIT PAPER NUMBER

1773

DATE MAILED: 12/01/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/821,796	<b>Applicant(s)</b> LE DU ET AL.	
	<b>Examiner</b> Monique R Jackson	<b>Art Unit</b> 1773	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 22 September 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 16-39 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 16-39 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. §§ 119 and 120**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☒ All    b) ☐ Some \*    c) ☐ None of:  
         1. ☒ Certified copies of the priority documents have been received.  
         2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
         3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
     \* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
     a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                             | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____                                    |

Art Unit: 1773

### **DETAILED ACTION**

1. The amendment filed 9/22/03 has been entered. New claims 37-39 have been added.

Claims 16-39 are pending in the application.

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 1-39 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention, particularly commensurate in scope with these claims, or to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. It is first noted that the instant claims recite the limitation "said layer (6,5) being made non-delaminable by heat treating the said structure to a temperature above the melting point of the binder layer (6)" however it is noted that the disclosure further recites that peeling tests were performed to measure the peeling force between these two layers hence indicating that they are in fact delaminable. The original disclosure recites, "Peel tests measuring the peel strength between the aluminum layer (5) and the binder layer (6) were carried out on three covers having the structure and composition as described above, before heat treatment and after heat

Art Unit: 1773

treatment...On three covers, these peel forces before heat treatment could not be measured as they were too low, whereas **those after heat treatment characterize a non-delaminable structure**. It is clearly apparent that the heat treatment makes it possible to obtain a non-delaminable metal layer (5)/binder layer (6) structure” (Page 13, line 35-Page 14, line 10, Emphasis added.) From this recitation, it is clear that the structure is in fact delaminable wherein the Applicant has equated undisclosed peel forces to “characterize” a non-delaminable structure but has not provided a clear definition of what the Applicant considers “non-delaminable” or what peel forces are considered “non-delaminable”. In addition, this characterization is based on heat-treating a particular “composition as described above” and not heat-treating any binder composition to a temperature above its melting point. Hence, the Applicant provides no guidance to one having ordinary skill in the art as to what they consider “non-delaminable” especially given that the examples show that the layers are actually delaminable, are directed to a particular composition, and do not disclose what peel forces are characteristic of a “non-delaminable structure”. Therefore, the original disclosure does not describe the subject matter in a way that one skilled in the art could make the invention without performing undue experimentation to determine what binder composition and heat-treating conditions would produce some unknown peel strengths that are characteristic of a “non-delaminable structure” given the level of unpredictability in the art.

5. The Examiner also notes that the instant claims as currently recited state that the structure comprises a “polypropylene layer (2) having a melting point above the melting point of the binder layer” and the “heat treating being at a temperature below the melting point of the polypropylene layer (2)”, however based on the original disclosure at the time of filing,

Art Unit: 1773

polypropylene layer (2) is part of the container not the multilayer lid structure. The specification does not teach any relationship between the polypropylene layer (2) and the binder layer or the heat treatment; it only teaches a relationship with polypropylene layer (7) which is optionally part of the multilayer lid. Hence the claims that recite a cover made from the structure comprising the polypropylene layer (2) or a package sealed by a cover comprising the polypropylene layer (2) are not supported given that the polypropylene layer (2), according to the description, is actually part of the container and not lid.

***Response to Arguments***

6. Applicant's arguments filed 9/22/03 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Monique R Jackson whose telephone number is 703-308-0428. The examiner can normally be reached on Mondays-Thursdays, 8:00AM-4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul J Thibodeau can be reached on 703-308-2367. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9310.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.



Monique R. Jackson  
Primary Examiner  
Technology Center 1700  
November 26, 2003